

मा.सर्वोच्च न्यायालयाच्या निर्णयाच्या अनुषंगाने
करार /कंत्राटी पध्दतीने निर्माण केलेल्या
पदांवरील नेमणुकीच्या अटी- शर्तीबाबत तसेच
सदर पदावर नियुक्त कर्मचाऱ्यांच्या सेवा
नियमित न करणेबाबत

महाराष्ट्र शासन
सामान्य प्रशासन विभाग
शासन परिपत्रक क्रमांक: एसआरव्ही २०१७/प्र.क्र.४५५/कार्या.१२

मादाम कामा मार्ग, हुतात्मा राजगुरु चौक,
मंत्रालय, मुंबई - ४०० ०३२
तारीख : ०९ फेब्रुवारी, २०१८

वाचा :-

सामान्य प्रशासन विभाग, शासन परिपत्रक क्रमांक : एसआरव्ही-२००५/प्र.क्र.४७/०५/१२,
दि.२५ ऑगस्ट, २००५.

शासन परिपत्रक :-

संदर्भाधीन शासन परिपत्रकाद्वारे मा.सर्वोच्च न्यायालयाने नियमित पदांवरील तात्पुरत्या/अस्थायी नियुक्त्या नियमित न करण्याबाबत वेळोवेळी दिलेल्या न्यायनिर्णयाच्या अनुषंगाने, सर्व पदांवरील नियुक्त्या विहित मार्गाने/माध्यमांमार्फत करण्याची दक्षता घेण्याबाबत, तसेच अत्यंत तातडीची गरज म्हणून तात्पुरत्या / अस्थायी नियुक्त्या कराव्या लागल्या तर त्या संपुष्टात आणण्याची दक्षता घेण्याबाबत, तसेच अशा कर्मचाऱ्यांनी त्यांना, नियमित सेवेत सामावून घेण्याची मागणी केल्यास ती मान्य करता येणार नसल्याचे, त्यांना स्पष्टपणे सूचित करण्याबाबतच्या सूचना देण्यात आलेल्या आहेत.

त्यानंतर शासनाने कंत्राटी तत्वावर पद नियुक्तीसाठी निर्माण केलेल्या पदांवरील कंत्राटी पध्दतीने नियुक्त कर्मचाऱ्यांच्या सेवा नियमित करण्याच्या अनुषंगाने, मा.सर्वोच्च न्यायालयाने सिव्हिल अपिल क्रमांक ६१३२-३३/२०१६ या प्रकरणात दिनांक १२ जुलै, २०१६ रोजी दिलेल्या न्यायनिर्णयानुसार कंत्राटी पध्दतीने निर्माण केलेली पदे कायम स्वरूपी समजण्यात येवू नये, अशा स्वरूपाचे आदेश दिले आहेत. मा.सर्वोच्च न्यायालयाच्या सदर निर्णयाची प्रत आवश्यक कार्यवाहीसाठी व माहितीस्तव या सोबत जोडण्यात आली आहे. सबब, मा.सर्वोच्च न्यायालयाच्या निर्णयाच्या अनुषंगाने, कंत्राटी पध्दतीने नियुक्तीसाठी निर्माण केलेल्या पदांवरील नियुक्त्या नियमित न करण्याबाबतची दक्षता घेण्यात यावी.

मा.सर्वोच्च न्यायालयाच्या सदर निर्णयाचे अवलोकन केले असता, त्यामधील परिच्छेद क्रमांक १३ व १५ अन्वये मा.न्यायालयाने गृह विभागाच्या दिनांक २१ ऑगस्ट, २००६ व दिनांक १५/०९/२००६ च्या शासन निर्णयाद्वारे विधी सल्लागार/अधिकारी व विधी निर्देशक या पदनामाची ४७१ पदे कंत्राटी तत्वावर भरण्याबाबतच्या शासन निर्णयातील अटी /शर्ती विचारात घेऊन त्या आधारे सदर कंत्राटी पध्दतीवर निर्माण केलेली पदे नियमित समजण्यात येऊ नये असा निर्णय दिला आहे.

सबब, सर्व प्रशासकीय विभागांनी किंवा त्यांच्या अधिपत्याखालील क्षेत्रीय कार्यालयाने यापुढे कंत्राटी पध्दतीने निर्माण करण्यात आलेल्या पदांवर नियुक्ती करतांना निर्गमित करावयाच्या आदेशामध्ये खाली नमूद केल्याप्रमाणे अटी / शर्ती अंतर्भूत करण्याची दक्षता घ्यावी.

- १) कंत्राटी पध्दतीने पद निर्मिती करतांना निर्गमित करावयाच्या **शासन निर्णयात** अंतर्भूत करावयाच्या **अटी / शर्ती** सोबतच्या **विवरणपत्र- अ** येथे नमूद करण्यात आल्या आहेत.
- २) कंत्राटी पध्दतीने नियुक्त केलेल्या कर्मचाऱ्यासोबत करावयाच्या **करारनाम्यामध्ये** अंतर्भूत करावयाच्या **अटी / शर्ती** सोबतच्या **विवरणपत्र- ब** येथे नमूद करण्यात आल्या आहेत.

सदर शासन परिपत्रक महाराष्ट्र शासनाच्या www.maharashtra.gov.in या संकेतस्थळावर उपलब्ध करण्यात आले असून त्याचा संकेतांक २०१८०२१२१२२७१६८५०७ असा आहे. हे परिपत्रक डिजिटल स्वाक्षरीने साक्षांकित करून काढण्यात येत आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने.

(गीता रा. कुलकर्णी)
उप सचिव (सेवा), महाराष्ट्र शासन

प्रत,

- १) राज्यपालांचे सचिव, राजभवन, मलबार हिल, मुंबई
- २) मुख्यमंत्री यांचे अपर मुख्य सचिव,
- ३) सर्व मंत्री/राज्यमंत्री यांचे खाजगी सचिव,
- ४) मा.मुख्य सचिव,
- ५) सर्व मंत्रालयीन विभागांचे सर्व अपर मुख्य सचिव/प्रधान सचिव/सचिव,
- ६) सर्व मंत्रालयीन विभाग,
- ७) *प्रबंधक,मूळ शाखा, उच्च न्यायालय,मुंबई,
- ८) *प्रबंधक, अपील शाखा, उच्च न्यायालय,मुंबई,
- ९) *प्रबंधक,लोक आयुक्त व उप लोक आयुक्त यांचे कार्यालय,मुंबई
- १०)*सचिव, महाराष्ट्र लोकसेवा आयोग,मुंबई,
- ११)*प्रधान सचिव, महाराष्ट्र विधानमंडळ सचिवालय (विधानसभा),मुंबई,
- १२)*सचिव,महाराष्ट्र विधानमंडळ सचिवालय (विधानपरिषद), मुंबई,
- १३)*सचिव, राज्य निवडणूक आयोग, नवीन प्रशासकीय भवन,मुंबई,
- १४)*महालेखापाल,महाराष्ट्र-१ (लेखा व अनुज्ञेयता), महाराष्ट्र, मुंबई,
- १५)*महालेखापाल,महाराष्ट्र-१ (लेखा व परीक्षा), महाराष्ट्र,मुंबई,
- १६)*महालेखापाल,महाराष्ट्र-२ (लेखा व अनुज्ञेयता),महाराष्ट्र,नागपूर
- १७)*महालेखापाल, महाराष्ट्र-२ (लेखा व परीक्षा), महाराष्ट्र, नागपूर,

- १८) अधिदान व लेखा अधिकारी, मुंबई
 - १९) निवासी लेखा परिक्षा अधिकारी, मुंबई,
 - २०) मुख्य लेखा परीक्षक (निवासी लेखे) कोकण भवन, नवी मुंबई,
 - २१) सर्व विभागीय आयुक्त,
 - २२) सर्व जिल्हाधिकारी,
 - २३) सर्व जिल्हा परिषदांचे मुख्य कार्यकारी अधिकारी,
 - २४) सर्व जिल्हा कोषागार अधिकारी,
 - २५) निरनिराळ्या मंत्रालयीन विभागांच्या नियंत्रणाखालील सर्व विभाग प्रमुख व कार्यालय प्रमुख,
 - २६) सामान्य प्रशासन विभागातील सर्व कार्यासने,
 - २७) निवडनस्ती,
- *पत्राने.

शासन परिपत्रक, क्र :- एसआरव्ही २०१७/प्र.क्र.४५५/कार्या.१२, दिनांक ०९ फेब्रुवारी, २०१८
सोबतचे विवरणपत्र- अ

कंत्राटी पध्दतीने पद निर्मिती करताना निर्गमित करावयाच्या शासन निर्णयात
अंतर्भूत करावयाच्या अटी / शर्ती

१) कंत्राटी तत्वावर भरतीसाठी ----- नविन पदे निर्माण करण्यास शासन मान्यता देण्यात येत आहे.
२) सदर पदे नियमित वेतनश्रेणीत न भरता रु.----- इतक्या एकत्रित वेतनावर कंत्राटी पध्दतीने खालील अटींच्या अधीन राहून भरण्यास शासन मान्यता देण्यात येत आहे.

- सदर पदांची नेमणूक ही पूर्णतः कंत्राटी पध्दतीने असेल.
- या पदावरील अधिकारी/कर्मचारी यांना शासकीय कर्मचारी म्हणून गणले जाणार नाही.
- कंत्राटी पध्दतीने नियुक्ती करावयाच्या पदांची शैक्षणिक अर्हता, अनुभव तसेच कर्तव्य व जबाबदाऱ्या याबाबतचा तपशिल सोबतच्या या परिशिष्टामध्ये देण्यात आला आहे. (संबंधित प्रशासकीय विभागाने त्यांच्या अधिपत्याखालील कार्यालयासाठी निर्माण केलेल्या कंत्राटी पदांसाठी आवश्यक असणारी शैक्षणिक अर्हता, अनुभव तसेच कर्तव्य व जबाबदाऱ्या याबाबतचा तपशिल नमूद करणारे परिशिष्ट जोडणे आवश्यक राहिल.)
- कंत्राटी पध्दतीने भरावयाच्या पदांसाठी निवडमंडळ गठित करण्यात येऊन सदर निवड मंडळामार्फत शासनाच्या प्रचलित धोरणानुसार उमेदवारांची निवड करण्यासाठी आवश्यक कार्यवाही करण्यात येईल.
- सदर नेमणूका या करार पध्दतीने प्रथमतः ११ महिन्यांसाठी करण्यात याव्यात. ११ महिन्यांनंतर आवश्यक असल्यास करारनाम्याची मुदत वेळोवेळी वाढविता येईल. तथापि, अशी मुदत वाढवितांना एका वेळी ही मुदत ११ महिन्यांपेक्षा अधिक असणार नाही यांची काळजी नियुक्ती प्राधिकारी यांनी घ्यावी. अशा प्रकारे जास्तीत जास्त ३ वेळा नियुक्ती करता येईल. त्यानंतर अशा उमेदवाराची पुनश्च नियुक्त करणे आवश्यक आहे असे सक्षम प्राधिकार्याचे मत असल्यास त्या उमेदवारास पुनश्च निवड प्रक्रियेस सामोरे जावे लागेल.
- संबंधित नियुक्ती प्राधिकारी शासनाच्या वतीने नियुक्तीच्या वेळी संबंधितांबरोबर विहित प्रपत्रात करार करतील. (विहित प्रपत्र विवरणपत्र-ब येथे नमूद करण्यात आले आहे.) कराराची सर्व कागदपत्रे जतन करून ठेवणे ही त्या संबंधित कार्यालयाची जबाबदारी असेल.

शासन परिपत्रक, क्र :- एसआरव्ही २०१७/प्र.क्र.४५५/कार्या.१२, दिनांक ०९ फेब्रुवारी, २०१८
सोबतचे विवरणपत्र- ब

कंत्राटी पध्दतीने नियुक्त केलेल्या कर्मचाऱ्यासोबत करावयाच्या करारनाम्यामध्ये
अंतर्भूत करावयाच्या अटी / शर्ती

AGREEMENT

This agreement is made at _____ on _____ between the Governor of State Of Maharashtra exercising the Executive Powers of the Government of State of Maharashtra through Shri. _____ COMPITENT AUTHORITY, having his office at _____, hereinafter referred to as “the Government” (which expression shall unless it be repugnant to the context or meaning thereof be deemed to include its successors, agents and permitted assignee) of the First Party. AND Shri / Smt. _____ age _____ residing at _____ hereinafter referred to as the Second Party.

WHEREAS the Government has decided to recruit the post of _____ on contract basis. Accordingly, the Government in -----Department has issued Government Resolution No. _____ dtd.

AND WHEREAS the Government had published advertisement in Daily New paper on _____ regarding recruitment for the post of _____

AND WHEREAS in pursuance to the above advertisement, the candidates who applied for the post of _____ possessing minimum qualification prescribed for the post of _____ by the competent authority and were called for interview for the said post of _____

AND WHEREAS after holding interview of Candidates called for interview for the post of _____. Shri / Smt. _____ is selected by the selection board constituted by the Government.

AND WHEREAS the Government vide its letter No. _____ dtd. _____ has communicated to Shri / Smt. _____ regarding his / her selection as a _____ for a period of 11 months on the consolidated salary of Rs. _____ (Rupees _____ only) and on the terms and conditions as stated herein below.

AND WHEREAS Shri / Smt. _____ has vide his / her letter dated _____ accepted the offer regarding appointment as a _____ by the Competent Authority on contract basis, on the terms and condition prescribed in this agreement.

AND WHEREAS Shri / Smt. _____ has therefore to execute an Agreement.

NOW THIS AGREEMENT WITNESSTH AND IT IS HEREBY AGREED AND DECLEARED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:-

1. The First Party hereby agrees to appoint Shri / Smt. _____ (Party No. II) as a _____ on contract basis for a period of 11 months commencing from _____ to _____ (mention date) on consolidated remuneration of Rs. _____ (Rupees _____ only) per month, and said remuneration will be payable at the end of each calendar month, according to British Calendar.
2. The Competent Authority will have full administrative control over the II nd Party and II nd party is bound to perform duties, as per their general and special instructions. Failure to do so shall be treated as breach and will be liable for termination of this contract.
3. List of Duties for the post of _____ is annexed to this Agreement as Schedule-I. It is agreed that duties prescribed in the Schedule-I are not exhaustive but are illustrative and II nd Party will be bound to perform its duties, as directed by Competent Authority from time to time. The Party No. II shall carry out its duties as _____ and execute orders / instructions issued by the First Party with due diligence and efficiency during period of contract.
4. In case of any default on the part of the Party No. II if the Government suffers financial loss or damage then the Government will be at liberty to recover the said loss / damage from Party No.II. It shall have charge on the amount of remuneration payable to Party No.II.
5. Assignment of 11 months contract is renewable for a further two terms of 11 months (i.e. total 3 terms). Subject to the satisfaction of Competent Authority, and on its recommendations.
6. The Party No.II will not be entitled to claim any rights, interest, benefits whatsoever of the permanent service in the Government.
7. The First Party will be at liberty to terminate this agreement without assigning any reason before completion of the tenure of 11 months and without giving prior notice in writing.
8. The Party No.II will also be at liberty to terminate this agreement by giving one month prior written notice to the First Party.
9. In the event of Clause 7 and 8, the First party shall be liable to pay proportionate remuneration to the Party No.II till the date of termination of the agreement.
10. The Party No.II shall hold in confidence and shall not disclose to any person any information, documents, official secrets from office record assigned to it. The Party No.II shall take due care to maintain the confidentiality of such information, documents, official secrets. The Party No.II shall be fully responsible for any disclosure or misuse of such information, documents and official secrets. The IInd Party will have to maintain utmost secrecy and confidentiality at all times as regard any information or knowledge obtained / gathered during the said contractual period, and will not indulge in any activity prejudicial to the interest of the Government.
11. The normal working hours of _____ shall be as determined by the concerned Competent Authority from time to time.
12. If at any time, the Competent Authority is of the opinion that integrity of the second party is doubtful or IInd party behave in a disorderly or in a negligent manner or

- violated any term/condition of this contract, then in that event, without giving any notice the contract shall stand terminated.
13. After termination of this agreement the Party No.II shall be bound to return all the office record, papers, documents, books or other material in its custody, to the party No.1.
 14. The Party No.II shall not be entitled to any kind of leave and he/she will not leave the Headquarter or duty without prior permission of the Competent Authority during the period of contract.
 15. Absence of the IInd party at the work for more than 10 days without any sufficient cause, would automatically amount to termination of this contract without any notice or intimation to the IInd Party by the Competent Authority. And IInd party shall not be entitled for the remuneration for the said period of absence.
 16. In case the Party No.II could not attend the work for any reason and remains absent with previous permission of the Competent Authority. Party No.II shall be entitled to proportionate remuneration for the period he actually attended the work.
 17. It is agreed that during the aforesaid period of contract IInd Party will not undertake any private work, except after taking special permission form the Competent Authority. If the Competent Authority is satisfied that such work affect the performance of duties and the same is against interest of State, the competent Authority may refuse permission of such work. Despite such refusal of permission, if IInd party accepts / continue to do the private work, this agreement/appointment shall stand terminated and if any loss / damage is caused to the Government due to such act of the IInd party, he/she will be liable for action as per Law.
 18. The Party No. Ii shall not delegate any of his/her rights and duties and obligation under the Agreement to any third person.

In witness whereof, the Parties hereto have both caused this Agreement to be executed the day and year first herein above written.

SIGNED, SEALED AND DELIVERED BY THE

(Name and Designation)

On behalf of the Governor of Maharashtra

Through Competent Authority Shri / Smt. _____ Designation

1st Party

In the presence of –

- 1)
- 2)

SIGNED AND SEALED BY Shri / Smt. _____ Designation IInd party.

In the presence of –

- 1)
- 2)

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 6132-33 OF 2016
(Arising out of SLP(C) Nos. 34788-34789 of 2012)

STATE OF MAHARASHTRA & ORS.

..Appellants

Versus

ANITA & ANR ETC..

...Respondents

With

CIVIL APPEAL NOS. 6134, 6135-36,
6137,6138,6139,6140,6141-42,6143,6144,6145,6146,6147-48,6149,
6150,6151,6152-53,6154,6155,6156,6157 OF 2016
(Arising out of SLP(C) Nos. 34792/12, 35146-35147/12, 36965/12,
36967/12, 36968/12, 38636/12, 39133-39134/12, 4482/13, 4484/13,
4588/13, 4592/13, 4594-4595/13, 8580/13, 11864/13, 17329/13,
17331-17332/13, 36070/13, 9282/14, 13647/14 and 14974/16)

J U D G M E N T

R. BANUMATHI, J.

Delay condoned. Leave granted.

2. This batch of appeals has been filed against the order dated 28.03.2012 and other impugned orders passed by the High Court of Bombay Bench at Aurangabad whereby 471 posts of Legal Advisors, Law Officers and Law Instructors created by Government Resolutions dated 21.08.2006 and 15.09.2006 for appointment on contractual basis under

the Director General of Police and Commissioner of Police, Greater Mumbai, were held to be permanent in nature. For convenience, appeals arising out of SLP(C) No.34788-34789 of 2012 are taken as the lead case.

3. State of Maharashtra vide Government Resolution dated 21.08.2006 approved creation of 471 posts in various cadres including Legal Advisors, Law Officers and Law Instructors under the establishment of Director General of Police and Commissioner of Police, Greater Mumbai. As per clause (3) of the said Government Resolution, the posts shall be filled up on contractual basis as per the terms and conditions prescribed by the Government. By a subsequent Resolution dated 15.09.2006, the Government maintained that 471 posts created vide resolution dated 21.08.2006 shall be filled up on contractual basis by payment of consolidated pay. As per the conditions of service laid down in the Government Resolution dated 15.09.2006, the appointment was initially for eleven months and with a provision of extension up to maximum of three terms each term being of eleven months. After expiry of third term, the candidates are required to face fresh selection process once again. After the expiry of the term of respondents, their appointments automatically came to an end. In pursuance of the expiry of terms of respondents, the State issued fresh advertisements for recruitment of Legal Advisors, Law Officers and Law Instructors on 05.12.2009,

13.01.2010 etc.

4. On expiry of the contractual period and being aggrieved by publication of fresh advertisement, the respondents approached the Maharashtra Administrative Tribunal challenging the conditions in the Government Resolutions dated 21.08.2006 and 15.09.2006, which laid down that the appointment of the law officers/law instructors shall be contractual, is arbitrary and that the respondents should have been appointed on regular pay scale and not on consolidated pay. The tribunal partly allowed the claim of the respondents and the tribunal struck down those provisions by holding that clause (3) of the Government Resolution dated 21.08.2006 and the clauses 'A', 'B', and 'C' in the Government Resolution dated 15.9.2006 suffered from arbitrariness and unreasonableness. However, no direction was issued by the tribunal directing the State Government to regularise the respondents.

5. Aggrieved thereof, respondents filed writ petitions before the High Court seeking for a direction to the State Government to regularise their services. State Government also filed writ petition challenging the order of the tribunal striking down the clauses in the said Government Resolutions as arbitrary and for setting aside the order of the tribunal.

6. The High Court vide impugned judgment dismissed all the writ petitions filed by the State Government as well as by the respondents.

The High Court took the view that 471 posts created by the State Government in various cadres are permanent posts and thus the appointments thereon must also be permanent. However, considering the fact that the appointment of the respondents were not made in regular manner under the constitutional scheme, the High Court held that the respondents/original applicants cannot claim permanency and/or regularisation.

7. Being aggrieved, the State as well as the applicants have preferred these appeals. Vide order dated 02.11.2012, this Court has granted stay of operation of the impugned judgment dated 28.03.2012 passed by the High Court as well as the order dated 06.05.2010 passed by the Maharashtra Administrative Tribunal, Aurangabad Bench and this Court directed that the respondents be permitted to continue in service until further orders. Similar orders came to be passed in other appeals also. However, this Court's order dated 02.11.2012 was modified by a subsequent order of this Court dated 19.08.2014 to the effect that "*the Law Officers/Law Advisers/Law Instructors, whose contractual appointments have come to an end, shall not be continued beyond their contractual period. If their appointments have been renewed, the same shall be continued till the period comes to an end*".

8. On instructions, counsel for the State of Maharashtra

submitted that in view of the order dated 19.08.2014, presently none of the respondents are continuing in service. Since none of the respondents are continuing in service, the appeals have become infructuous. However, the appeals ought to be decided to answer the contentious issues raised and to settle the questions of law involved in the matter.

9. Learned counsel for the appellants contented that 471 posts created by the Government Resolution dated 21.08.2006 were not permanent posts and the appointments were made purely on contractual basis. It was submitted that filling up of 471 posts on contractual basis and not on permanent basis is a matter of government policy and that it was beyond the purview of the tribunal to set aside the same. It was submitted that the respondents had entered into a contract with the State Government thereby accepting the terms of service laid down in Government Resolution dated 15.09.2006 and having accepted the appointment on contractual basis, the respondents are estopped from challenging the validity of the said Government Resolutions dated 21.08.2006 and 15.09.2006.

10. Per contra, the counsel for the respondents contended that clause (3) in the Government Resolution dated 21.08.2006 and clause 'A', 'B' and 'C' in the Government Resolution dated 15.09.2006 are arbitrary and unreasonable and rightly struck down by the tribunal as violative of

Articles 14 and 16 of the Constitution of India. It was further contended that even though the respondents had entered into a contract with the government accepting clause (3) in the Government Resolution dated 21.08.2006 and the clauses 'A', 'B' and 'C' in the Government Resolution dated 15.09.2006, the same will not operate as estoppel.

11. We have carefully considered the rival submissions made by learned counsel for the parties and perused the impugned judgment and the material on record.

12. In the Government Resolution dated 21.08.2006 while creating 471 posts in various cadres including Legal Advisors, Law Officers and Law Instructors in clause (3) of the said Resolution, it was made clear that the posts created ought to be filled up on contractual basis. Clause (3) reads as under:-

“The said posts instead of being filled in the regular manner should be kept vacant and should be filled on the contract basis as per the terms and conditions prescribed by the government or having prepared the Recruitment Rules should be filled as per the provisions therein.”

13. Subsequently, the said Resolution was modified by Government Resolution dated 15.09.2006. In the said Resolution, the column specifying “*Pay Scale*” was substituted with column “*Combined Permissible Monthly Pay + Telephone & Travel Expenses*”. However, there was no change in the decision of the government on filling up the posts on contractual basis. Government Resolution dated 15.09.2006 stipulates

the terms and conditions of the contractual appointments. Clauses 'A', 'B', 'C' and 'D' read as under:-

“A) The appointment of the said posts would be completely on contractual basis. These officers/employees would not be counted as government employees.

B) The said appointments should be made on contract basis firstly for 11 months. After 11 months the term of the agreement could be increased from time to time if necessary. Whereas, the appointing authority would take the precaution while extending the terms in this manner that, at one time this term should not be more than 11 months. The appointment in this way could be made maximum three times. Thereafter, if the competent authority is of the opinion that the reappointment of such candidate is necessary then such candidate would have to again face the selection process.

C) The concerned appointing authority at the time of the appointment would execute an agreement with the concerned candidate in the prescribed format. The prescribed format of the agreement is given in Appendix 'B'. It would be the responsibility of the concerned office to preserve all the documents of the agreement.

D) Except for the combined pay and permissible telephone and travel expenses (more than the above mentioned limit) any other allowances would not be admissible for the officers/employees being appointed on contract basis.”

14. The intention of the State Government to fill up the posts of Legal Advisors, Law Officers and Law Instructors on contractual basis is manifest from the above clauses in Government Resolutions dated 21.08.2006 and 15.09.2006. While creating 471 posts vide Resolution dated 21.08.2006, the Government made it clear that the posts should be filled up on contractual basis as per terms and conditions prescribed by the Government. As per clause 'B' of the Government Resolution dated 15.09.2006, the initial contractual period of appointment is eleven months and there is a provision for extension of contract for further eleven

months. Clause 'B' makes it clear that the appointment could be made maximum three times and extension of contract beyond the third term is not allowed. If the competent authority is of the opinion that the reappointment of such candidates is necessary then such candidates would again have to face the selection process.

15. It is relevant to note that the respondents at the time of appointment have accepted an agreement in accordance with Appendix 'B' attached to Government Resolution dated 15.09.2006. The terms of the agreement specifically lay down that the appointment is purely contractual and that the respondents will not be entitled to claim any rights, interest and benefits whatsoever of the permanent service in the government. We may usefully refer to the relevant clauses in the format of the agreement which read as under:-

“1. The First Party hereby agrees to appoint Shri/Smt. _____ (Party No. II) as a _____ on contract basis for a period of 11 months commencing from _____ to _____ (mention date) on consolidated remuneration of Rs. _____ (Rupees _____ only) per month, and said remuneration will be payable at the end of each calendar month according to British Calendar. It is agreed that IInd party shall not be entitled for separate T.A. and D.A. during the contract period....

2.
3.
4.

5. Assignment of 11 months contract is renewable for a further two terms of 11 months (i.e. total 3 terms), subject to the satisfaction of Competent Authority, and on its recommendations.

6. The Party No. II will not be entitled to claim any rights, interest, benefits whatsoever of the permanent service in the Government.”

16. The above terms of the agreement further reiterate the stand of the State that the appointments were purely contractual and that the respondents shall not be entitled to claim any right or interest of permanent service in the government. The appointments of respondents were made initially for eleven months but were renewed twice and after serving the maximum contractual period, the services of the respondents came to an end and the Government initiated a fresh process of selection. Conditions of respondents' engagement is governed by the terms of agreement. After having accepted contractual appointment, the respondents are estopped from challenging the terms of their appointment. Furthermore, respondents are not precluded from applying for the said posts afresh subject to the satisfaction of other eligibility criteria.

17. The High Court did not keep in view the various clauses in the Government Resolutions dated 21.08.2006 and 15.09.2006 and also the terms of the agreement entered into by the respondents with the government. Creation of posts was only for administrative purposes for sanction of the amount towards expenditure incurred but merely because the posts were created, they cannot be held to be permanent in nature. When the government has taken a policy decision to fill up 471 posts of Legal Advisors, Law Officers and Law Instructors on contractual basis, the

tribunal and the High Court ought not to have interfered with the policy decision to hold that the appointments are permanent in nature.

18. In the result, the impugned judgment of the High Court is set aside and these appeals are allowed.

19. Consequently, all other appeals are also allowed.

20. No costs.



.....CJI.
(T.S. THAKUR)

.....J.
(R. BANUMATHI)

.....J.
(UDAY UMESH LALIT)

New Delhi;
July 12, 2016.

JUDGMENT